IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRITS No. 3312 of 2004

HIMMAT MAL KUMAWAT
V/S
STATE & ANR

Mr. RAJESH JOSHI, for the appellant / petitioner

Mr. NM LODHA, A.A.G., for the respondent

Date of Order : 3.9.2004

HON'BLE SHRI N P GUPTA,J.

ORDER

Vide order dated 11.8.2004, show cause notice was ordered to be issued, then on 17.8.2004, when the respondent appeared, and sought time to file reply, interim stay was granted, staying holding of meeting of "No Confidence Motion", which was scheduled to be held on 20.8.2004. Thereafter, the matter comes up today for admission. However, at the request of both the learned counsel for the parties, the matter is being finally decided at this stage itself, as the factual aspect of the controversy is not in dispute.

I have heard the learned counsel for the parties.

By this writ petition, the petitioner seeks to challenge the notice, Annexure-3, dated 29.7.2004, calling a meeting for consideration of No Confidence Motion on 20.8.2004.

The main contention, advanced by the learned counsel for the petitioner, is that on 29.7.2004, a notice was delivered by eight members of the Municipal Board, Shivganj for taking action on the No Confidence Motion. The certified copy of the application has been produced by the petitioner as Annexure-1. On receipt of this application, a notice, Annexure-3 has been issued by the Collector on 29.7.2004 itself, directing a meeting to be convened on 20.8.2004 for consideration of No Confidence Motion. It is contended by the learned counsel for the petitioner that as a matter of fact, and law, Annexure-1 does not fulfill the requirements of law, inasmuch as, according to

Section 72 of the Municipalities Act read with Rule 3 of the Rajasthan Municipalities (Motion of No Confidence Against Chairman or Vice Chairman) Rules, 1974, the requirement is that a written notice of intention to make a motion of No Confidence in the Chairman or Vice Chairman signed by one third members of the Board together with a copy of the motion, which is proposed to be made is to be given. It is, thereupon, only that the Collector is to convene a meeting for the consideration of the motion. As against this, in the present case, Annexure-1 is only a notice of intention to make a No Confidence Motion, and is not "together with a copy of the motion, which is proposed to be made". In that view of the matter, the Collector had no jurisdiction to issue notice, Annexure-3 on the basis of Annexure-1.

In reply, it is not disputed that whatever was given to the Collector was only Annexure-1. The contention raised on behalf of the respondents is that Annexure-1 is a composite document, being a notice of intention to make a motion of no confidence, so also is the motion of no confidence itself as well.

Much stress is led on the expression used "इस अविश्वास प्रस्ताव के माध्यम से" in Annexure-1. On the basis of this expression, it is contended that this document, Annexure-1 fulfills both the requirements, being that of the requirement of notice, so also the copy of the motion, which is incorporated in this document itself.

I have considered the submissions.

I may gainfully quote the provisions of Section 72 of the Act, so also Rule 3 of the Rules, which read as under:

> "Sec.72. Motion of non-confidence against Chairman:(1) Motion expressing non-confidence in the Chairman or the Vice-Chairman shall be made and considered in the manner prescribed.
> (2) No notice of motion under this section shall be made within one year of the assumption of office by a Chairman or a Vice-Chairman.
> (3) If a motion under sub-section (1) is not carried, no notice of a subsequent motion expressing non-confidence in the same Chairman or Vice-Chairman shall be made until after the expiration of two years from the date of the meeting in which the motion was considered."
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> "Rule.3. Procedure etc.-(1) A written notice of intention to

make motion of no confidence in the Chairman or Vice-Chairman signed by one-third members of the Board together with a copy of the motion which is proposed to be made shall be sent to the Collector of the District, who shall thereupon convene a meeting for the consideration of the motion to be held at the office of the board on he date and at the time appointed by him, which shall not be earlier than twenty or later than thirty days from the date of the receipt of the notice.

(2) The Collector shall send by registered post not less than seven clear days before the date of the meeting a notice of such meeting and of the date and time fixed therefore to every member of the Board.

(3) The Collector or his nominee shall preside at such meeting and if within half an hour from the time appointed for the meeting Collector or his nominee is not present or is unable for any unavoidable cause to preside at the meeting, the meeting shall stand adjourned to the date and the time to be fixed and notified to the members.

(4) A meeting convened for the purpose of consideration of the motion of no-confidence under these rules shall not for any reason except stated at sub-clause (3) be adjourned.

(5) As soon as the quorum is present the Collector or his nominee shall read the motion for the consideration of which the meeting has been convened and declare it to be open for discuss on. No meeting for the consideration of the motion of no confidence shall be held unless the quorum is present. One-third of the whole number of members shall from the quorum.

(6) Such discussion shall not be adjourned and shall automatically terminate on the expiry of four hours from the time fixed for the commencement of the meeting unless it is concluded earlier.

(7) On the conclusion of the debate or upon the expiry of the said period of four hours, as the case may be, the motion shall be put to the vote of the Board and the Collector or his nominatee shall neither speak on the merits thereof nor thereon.

(8) If the motion is not carried by a 2/3 majority of the whole number of members, or if any meeting cannot be held for want of quorum, the motion of no confidence against Chairman or Vice-Chairman, as the case may be, shall be deemed to have been lost.

(9) If the motion is carried by a majority of 2/3 number of whole number of members, the motion shall be deemed to have been passed against the Chairman or Vice-Chairman, as the case may be and such Chairman or Vice-Chairman shall forthwith be deemed to have vacated his office."

Learned counsel for the petitioner has relid upon the Division Bench judgment of this Court in Ramu Ram Vs. Chief Executive Officer, Sriganganagar & Ors., passed in D.B.Civil Special Appeal No.558/2003 decided on 13.5.2004, and a Single Bench judgment of this Court in Partu Vs. State of Rajasthan & Ors., decided on 5.8.2004.

I have gone through the judgments.

Both these cases relate to the No Confidence Motion against the

Sarpanch of Panchayati Raj Institution. However, since the relevant provisions of the Panchayati Raj Act, and the Rules, being Section 37 of the Act of 1994, and Rule 21 of the Rules of 1996 are in perimateria, principle propounded in the judgments holds good for the cases of requirement of No Confidence Motion under the Municipalities Act as well.

In Ramu Ram's case, a notice was presented before the Chief Executive Officer, but the notice was not accompanied by the copy of the motion, and the Division Bench held that the meeting of the Panchayat is to be held for consideration of "No Confidence Motion", and therefore, a copy of the proposed motion of no confidence is required to be enclosed with the notice, and the specific stand taken by the respondents in that case, to construe the notice itself to be the proposed motion of no confidence, was turned down. Reliance was also placed by the Division Bench on another Division Bench judgment of this Court in Smt.Kamlesh Kumari Vs. State of Rajasthan, reported in 2000(1) RLR 520.

Likewise, in Partu's case also, the notice was given, but then that was not accompanied with the copy of the proposed motion, in that case, the document, Annexure-3 was construed to be fulfilling the requirement of written notice to make the motion, but then, that was found to be not "together with the copy of the proposed motion..". In that view of the matter, the notice was quashed.

In the present case also, Annexure-1 at best is a notice of intention to make a motion of no confidence, but then, it is not accompanied with the other document, being "motion of no confidence proposed to be made". Inherently, on the face of the language of Rule 3, the documents, being notice and the proposed motion, are contemplated to be two independent documents, one conveying notice of intention to make a motion, so that the concerned authority may proceed ahead in the case, the notice accompanied with the motion, which is proposed to be made in the meeting to be convened.

In absence of any "motion", the mere written notice of intention to make a motion cannot entitle the concerned authority to convene a meeting.

In that view of the matter, I have no option but to quash,

Annexure-3 in view of Annexure-1, being not accompanied with the "copy of the no confidence motion proposed to be made".

Accordingly, the writ petition is allowed, and the notice, Annexure-3 is quashed.

(N P GUPTA),J.

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